EXHIBIT D

Memorandum of Agreement Between
The Department of Justice Executive Office for Immigration Review and
The Department of War
For the Detailing of Temporary Immigration Judges

This is a new memorandum of agreement (MOA) between the Department of Justice (DOJ), Executive Office for Immigration Review (EOIR), and the Department of War (DoW), referred to collectively as the "Parties."

I. Purpose

This MOA sets forth the agreement between the Parties regarding the detail of DoW attorneys to serve as EOIR Temporary Immigration Judges (TIJ) pursuant to section 240 of the Immigration and Nationality Act (8 U.S.C. § 1229a), 8 C.F.R. § 1003.10(e), and 31 U.S.C. § 1535 (the Economy Act).

II. Appointment, Requirements, the DoW as Employer, Expenses

A. Each candidate for TIJ appointment must satisfy EOIR security, screening, and vetting requirements, including the requirement for a favorably adjudicated background investigation or reinvestigation as described in 5 C.F.R. § 731.106(d). If the existing background investigation for the candidate does not meet EOIR requirements, or if the TIJ will be performing duties that require a higher clearance level, DoW will initiate and pay for an investigation or reinvestigation at the required level with costs incurred reimbursed by EOIR.

B. DOJ retains the authority to appoint TIJs and terminate all TIJ appointments. Details will be made for fixed terms, specified at the time of detailing. Appointment, renewal, or extension of a detail assignment will only occur with the mutual agreement of DOJ and DoW. DOJ, through EOIR, and DoW will document in writing, which may include email, their agreement regarding specific details under this MOA. At all times during their term of appointment under this MOA, a TIJ remains an employee of DoW.

C. DOJ will be responsible for coordinating the execution of TIJ appointments. All TIJ details are subject to the approval of the Attorney General and appointment by the Attorney General as a TIJ. Any TIJ detail may be terminated at any time for any reason at the discretion of the Attorney General. The renewal of any TIJ detail is subject to the approval of the Attorney General and a new appointment by the Attorney General.

D. At all times during the TIJ appointment, the TIJ shall maintain an active bar membership in good standing in at least one State, territory, or the District of Columbia. An active bar membership is a class, category, or status of bar membership in an attorney's licensing jurisdiction that authorizes the attorney to practice law. In executing the TIJ appointment document, the TIJ agrees to provide EOIR with proof of active bar membership and good standing prior to the detail and/or upon request. Failure to maintain an active membership

at any time during a TIJ detail may result in the termination of the detail, as well as disciplinary action (for which DoW would be responsible).

E. The parties understand that the termination of a TIJ's appointment is not subject to review, and the TIJ does not have administrative appeal rights relating to the termination of his/her TIJ appointment. EOIR will require the TIJ to coordinate the transfer of any pending matters or cases to another EOIR employee as appropriate prior to the termination of the appointment.

F. The DoW will detail individuals to EOIR for appointment as TIJs under this MOA. Such details will be reimbursable. EOIR will be responsible for detail-related costs and expenses, such as salary, benefits, security investigations, and travel-related expenses incurred in the performance of TIJ duties, to include any travel to attend EOIR training. EOIR will not reimburse any costs related to day-to-day commuting within the commuting area of the TIJ's normal (non-detail) duty station.

III. Duties, Assignments, and Evaluations

A. **Case Assignments.** The Parties agree that each TIJ will be detailed on a full-time basis to EOIR. In this capacity, the TIJ will be assigned primarily to matters or cases involving aliens in detention but may also be assigned to other matters or cases involving non-detained aliens as determined by EOIR and will work solely on casework assigned by EOIR. DoW will ensure that all other work responsibilities of the TIJ have been reassigned prior to the start of the detail. During the duration of the detail, DoW will not assign additional work or responsibilities to the TIJ, with the exception of annual training requirements or physical readiness assessments, which will be assigned with advance notice to and deconfliction with the TIJ's detail supervisor.

B. **Supervision.** Each TIJ will function on a day-to-day basis in an entirely civilian capacity under the supervision of managers within EOIR or other supervisory DOJ personnel. EOIR will control case assignments and supervise the TIJ in all matters undertaken on behalf of EOIR and in the execution of any authority granted to him/her in his/her capacity as a TIJ. The final decision-making authority on all cases remains with the United States Attorney General.

C. **Dress Code.** Each TIJ will dress in appropriate civilian business attire. While adjudicating cases, the TIJ will wear a black judicial robe.

D. **Evaluation of TIJ Performance.** DoW is responsible for issuing final annual performance evaluations for each TIJ. DoW will be responsible for the granting and/or payment of any performance award approved by DoW or the MILDEP. EOIR will provide clear performance requirements and expectations for purposes of the detail and will provide input to DoW concerning each TIJ's performance. DoW will retain authority to enforce its procedures and policies as they apply to DoW employees. Any such matters will be reported promptly to DoW by EOIR.

E. **Lapse in Performance and/or Conduct.** EOIR is responsible for mandatory reporting requirements regarding any lapse in performance or conduct as pertaining to the TIJ's duties while detailed to EOIR. EOIR will notify DoW of any lapse in performance and/or conduct attributed to the TIJ during the detail. EOIR will notify DoW if EOIR terminates the appointment of a TIJ due to lapse in performance and/or conduct or for any other reason.

IV. Duty Station, Office Space, Clerical Support, and Court Access

The TIJ is to perform work as a TIJ full-time in EOIR's physical space, and the following provisions will apply for the duration of the detail:

A. EOIR will set the TIJ's work schedule.

B. EOIR will provide office space, if appropriate, and clerical support for the TIJ, as determined by EOIR.

C. EOIR will provide all equipment, Information Technology (IT) system access and legal research tools necessary for the TIJ to perform their work during the detail.

D. EOIR will provide or refund any TIJ travel costs incident to the performance of their TIJ duties. This does not include any day-to-day commuting costs incurred within the commuting area of the TIJ's normal (non-detail) duty station.

E. Except as addressed herein, DoW will be responsible for approving TIJ requests for leave according to its usual time and attendance procedures and policies, and with consideration of EOIR's policies and procedures. DoW will consult EOIR to ensure that the TIJ's work responsibilities are considered as part of any leave decision. Each TIJ is responsible for providing timely notice of upcoming leave to his/her EOIR supervisor to ensure EOIR can provide adequate coverage for the TIJ's absence.

F. The processing of the TIJ's time and attendance for DoW purposes, as well the processing of pay and benefits for eventual reimbursement by EOIR, shall be the sole responsibility of the DoW. No premium pay for a TIJ under title 5, United States Code, sections 5542-5549 shall be authorized, including overtime pay, and EOIR will not reimburse any such premium pay. EOIR will promptly inform DoW of any concerns regarding the TIJ's time and attendance. This provision does not negate or interfere with EOIR's ability to monitor time and attendance as provided in paragraph VI.A. DoW understands that the TIJ is otherwise expected to adhere to EOIR schedules and policies, similar to other IJs. DoW agrees to endeavor not to approve leave requests in a manner that would interfere with the TIJ's otherwise regular performance of normal IJ duties.

G. At the time the TIJ initially accesses EOIR's physical space and/or IT Systems, EOIR will require the TIJ to agree to all rules and regulations concerning EOIR's space and IT Systems and will provide the TIJ with a Personal Identity Verification (PIV) card, which is the DOJ version of the DoW Common Access Card (CAC).

H. EOIR will assist in completing the necessary paperwork to obtain authorization for the TIJ to have access to immigration court databases.

V. Position Requirements, Conduct, and Training

A. **Compliance with Rules, Regulations, Policies.** In executing the TIJ appointment document, the TIJ will be briefed on and required as a condition of their appointment to agree that, while remaining subject to all applicable DoW standards, policies, and procedures, the TIJ, for the duration of the appointment, shall also be subject to all applicable DOJ and EOIR rules, regulations, procedures, and policies. These include, but are not limited to:

a. Rules, regulations, procedures, and policies regarding the use of IT systems and equipment and the protection of DOJ data

b. The Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. § 2635 *et seq.*, as supplemented by 5 C.F.R § 3801

c. Federal conflict of interest laws, 18 U.S.C. §§ 207, 208, and 209

d. Federal law restricting the disclosure of certain confidential governmental information, 18 U.S.C. § 1905

e. The Freedom of Information and Privacy Acts, 5 U.S.C. §§ 552 and 522a

f. Political activity restrictions, 5 U.S.C. § 7321 *et seq.*

Additionally, TIJs shall also be subject to the following confidentiality or disclosure protections related to their duties:

- 8 U.S.C. § 1160(b)(5), (6) and 8 C.F.R. § 210.2(e) (relating to special agricultural workers)
- 8 U.S.C. § 1186a and 8 C.F.R. §§ 216.5(e)(3)(viii), 1216.5(e)(3)(viii) (relating to battered spouses and children)
- 8 U.S.C. § 1202(f) (relating to confidentiality of Department of State records regarding the issuance or refusal of immigration visas or permits to enter the United States)
- 8 U.S.C. § 1225(c)(2) (describing certain confidential information)
- 8 U.S.C. § 1254a(c)(6) and 8 C.F.R. §§ 244.16, 1244.16 (relating to temporary protected status)
- 8 U.S.C. § 1255a(c)(4), (5) and 8 C.F.R. §§ 245a.2(t), 245a.3(n), (relating to applications for adjustment of status and legalization)
- 8 U.S.C. § 1304(b) (relating to alien registration and fingerprinting)

- 8 U.S.C. § 1367 (relating to individuals who have received benefits pursuant to the Violence Against Women Act (VAWA), T visa nonimmigrant status, or U visa nonimmigrant status)
- Section 508 of the Juvenile Justice and Delinquency Prevention Act of 1974, 18 U.S.C. § 5038 (concerning use of juvenile records)
- 22 U.S.C. § 7105(c)(1) and 28 C.F.R. § 1100.31(d)(2) (relating to information identifying trafficking victims and their family members)
- 8 C.F.R. §§ 208.6, 1208.6 (relating to asylum applications, credible fear determinations, or reasonable fear determinations; and as a matter of policy, information contained in or pertaining to any application for refugee status).
- 8 C.F.R. § 236.6 (concerning information regarding detainees)
- 8 C.F.R. § 1003.46 (concerning information under protective order or in sealed submissions in immigration courts)

Any deconfliction in application of the standards, policies, and procedures of the Parties to the TIJ that may be required from time to time will be handled through appropriate consultation among the Parties.

B. **Conflicts of Interest.** The Parties recognize that there may be circumstances when the TIJ may have a conflict of interest in a particular case. Upon perceiving the possibility of a conflict of interest in any assignment, the TIJ will consult an EOIR supervisor, the EOIR Ethics Advisor and Professional Responsibility Officers, EOIR's General Counsel's Office, and/or the DOJ's Professional Responsibility Advisory Office, as appropriate.

C. **Training.** EOIR will provide the TIJ with all training necessary to perform their duties. EOIR will require the TIJ to attend training as directed by EOIR. The TIJ may also be asked to complete all DOJ professionalism and training requirements.

VI. Reporting and Documentation

A. EOIR may require the TIJ to file time records utilizing EOIR's case management system for recording work for EOIR in addition to time reporting methodology for DoW.

B. EOIR may require the TIJ to participate in case reporting requirements for EOIR.

VII. Liability

A. All Parties shall be responsible for any liability arising from their own conduct and shall retain any immunity and all defenses available to them pursuant to Federal and state law.

B. No Party agrees to insure, defend, or indemnify any other Party.

C. All Parties shall cooperate with the other Parties in the investigation and resolution of administrative actions or litigation arising from conduct related to the responsibilities and procedures addressed herein.

D. No Party shall be responsible for delays or failures in performance from acts or events beyond the reasonable control of such Party, and which could not have been avoided through the exercise of due care, e.g., from natural disasters or an act of terrorism.

E. This MOA is for the sole and exclusive benefit of the Parties and shall not be construed to bestow any legal right or benefit upon any other persons or entities.

VIII. Termination and Modification

A. EOIR or DoW may terminate this MOA at any time. Such termination shall require notification in writing, with at least 30 days' notice, and provide the termination's effective date.

B. Upon termination of this MOA, any remaining TIJ details to EOIR and appointments as TIJs will end, consistent with section II, above.

C. This MOA represents the agreement of the Parties to the terms and conditions of the detail of TIJs under this MOA, and no other conditions, oral or written, will affect such details unless this MOA is modified through an amendment signed by the Parties.

IX. Effective Date

This MOA shall be effective on the date of the final signature.

X. Signatures

By signing this MOA below, all signatories affirm that they have read this MOU and agree to its terms, restrictions, and limitations, as applicable.

DEC 0 4 2025

Steve Feinberg
Deputy Secretary of War

DAREN MARGOLIN

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Daren Margolin
Director, Executive Office for Immigration Review